

**PT 01-39**

**Tax Type: Property Tax**

**Issue: Educational Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**KENDALL  
COLLEGE,  
APPLICANT**

**v.**

**ILLINOIS DEPARTMENT  
OF REVENUE**

**No. 99-PT-0003  
(97-16-1149)**

**P.I.N.S: 05-33-426-021  
05-33-426-045**

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**RECOMMENDATION FOR DISPOSITION  
PURSUANT TO APPLICANT'S MOTION FOR SUMMARY JUDGMENT**

**APPEARANCES:** Messrs. Jeffrey Jahns and of Seyfarth, Shaw, Fairweather & Geraldson on behalf of Kendall College (hereinafter the "applicant").

**SYNOPSIS:** This matter comes to be considered pursuant to applicant's motion for summary judgment. Applicant filed this motion after the Illinois Department Of Revenue (hereinafter the "Department") issued a determination in this matter on November 19, 2000. Said determination found that real estate identified by Cook County Parcel Index Numbers 05-33-426-021 and 05-33-426-045 (hereinafter collectively referred to as the "subject properties"), were not in exempt use, and therefore did not qualify for exemption from 1997 real estate taxes under Section 15-35 of the Property Tax Code, 35 ILCS 200/1-1, *et seq.* (hereinafter the "Code").

At issue herein are the following legal questions: (1) whether applicant is entitled to a pro-rated exemption from 1997 real estate taxes because it acquired ownership of the

subject property on July 21, 1997; (2) whether any or all parts of the subject properties were “used ... exclusively for school purposes,” as required by Section 15-35(b) of the Code, on or after July 21, 1997; and, (3) whether the parking areas situated on the subject properties were “used as part of a use for which an exemption is provided by this Code,” as required by Section 15-125 of the Code,” on or after July 21, 1997.

The controversy arises as follows:

Applicant filed an Real Estate Tax Exemption Complaint with the Cook County Board of Review (hereinafter the "Board") on June 10, 1998. The Board reviewed applicant's complaint and subsequently recommended to the Department that all areas of the subject properties be exempt as of July 21, 1997. The Department, however, rejected this recommendation by issuing a determination, dated November 19, 1998, which found that the subject properties were not in exempt use.

Applicant filed a timely appeal to this denial and then filed this motion for summary judgment. Following a careful review of that motion and its supporting documentation, I recommend that applicant’s motion be granted as to that 45% of the 1997 assessment year which occurred on or after July 21, 1997.

**FINDINGS OF FACT:**

1. The Department’s jurisdiction over this matter and its position therein are established by the determination, issued by the Office of Local Government Services on November 19, 1998, which found that the subject properties are not in exempt use. Administrative Notice.
2. The Application For Property Tax Exemption, filed with the Department on July 27, 1998, indicates that the subject properties are: (a) situated on real estate identified by

Cook County Parcel Index Numbers 05-33-426-021 and 05-33-426-045; (b) located at 2600 Central Park Avenue and 3009 Central Street, Evanston, IL; (c) improved with two separate buildings and an adjacent parking area. Administrative Notice.

3. The Application, together with a Sidwell map and Plat of Survey indicate that: (a) one building, situated on Parcel Index Number, 05-33-426-021 and located at 2600 Central Park Avenue, is a 2 story, 3,500 square foot museum complex; (b) the other building, situated on Parcel Index Number 05-33-426-045 and located at 3009 Central Street, is a 1½ story, 2,400 square foot museum storage and classroom facility; and, (c) the parking area runs across the northernmost portion of 05-33-426-021 and half of the northernmost portion of parcel 05-33-426-045.
4. Applicant, a liberal arts college duly accredited by the North Central Association of Colleges, has its main campus in Evanston, Illinois and offers Associate's and Bachelor's degrees in a variety of majors, including American Studies and Early Childhood Education. Applicant Motion Ex. A, E.
5. Applicant obtained ownership of the subject properties by means of a warranty deed dated July 21, 1997. Applicant Motion Ex. D.
6. Applicant acquired the subject properties in order to provide new facilities for the Mitchell Museum of the American Indian (hereinafter the "Museum"), which had been part of its main campus since 1997. Applicant Motion Ex. A.
7. The Museum contains numerous artifacts pertaining to Native American culture that are used as resources for applicant's American Studies degree program. *Id*; Applicant Motion Ex. E.

8. Applicant began making necessary adaptations to the Museum facility, which is situated on parcel 05-33-426-021, immediately upon acquiring ownership thereof. It completed these adaptations in October of 1997 and opened the museum for use directly thereafter. Applicant Motion Ex. A.
9. Applicant initially used the adjacent building, situated on parcel 05-33-426-021, to store and stockpile materials used in the adaptation of the Museum facility. After those adaptations were completed, applicant began developing the adjacent building for use as a children's center for its Early Childhood Education degree program. *Id.*
10. Applicant completed the construction of the children's center in mid-1998 and opened it for use in the fall of that year. *Id.*
11. Applicant used the parking area first as a staging area for the construction crews that were working on the Museum and then as a free parking facility for the Museum facility and building adjacent thereto.

**CONCLUSIONS OF LAW:**

Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c). There are no genuine issues of material fact in this case. Therefore, the issues for decision herein necessarily become ones of law. Evangelical Alliance Mission v. Department of Revenue, 164 Ill. App.3d 431, 439 (2<sup>nd</sup> Dist. 1987). ). Those issues are, precisely stated, whether: (1) applicant is entitled to a pro-rated exemption from 1997 real estate taxes because it acquired ownership of the subject property on July 21, 1997; and, (2) applicant's post-acquisitional uses of the subject properties fell within the requirements articulated in Sections 15-35(b) and 15-125 of the Property Tax Code, 35 ILCS 200/1-1, *et seq.*

A. Pro-Ration Issue

With respect to the first inquiry, the statute governing alterations in exempt status due to changes in ownership is found in Section 9-185 of the Code. This provision, states, in pertinent part, that:

... when a fee simple title or lesser interest in property is purchased, granted, taken or otherwise transferred for a use exempt from taxation under this Code, that property shall be exempt from the date of the right of possession, except that property acquired by condemnation is exempt as of the date the condemnation petition is filed.

35 ILCS 200/9-185.

The warranty deed (Applicant Motion Ex. D) proves that this applicant obtained its “right of possession” on July 21, 1997. Accordingly, Section 9-185 mandates that any exemptions granted herein be limited to the 45% of the 1997 assessment year which transpired on or after that date.

B. Use Issues

The first step in analysis of the use issues is setting forth the applicable Constitutional and statutory standards.

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted Section 15-35(b) of the Property Tax Code, wherein “property of schools on which the schools are located and any other property of schools used by the schools exclusively for school purposes” is exempted from real estate taxation. 35 ILCS 200/15-35(b). The statutory requirements for this exemption are: (1) exempt ownership, which means that the

property must be owned by a duly qualified “school”<sup>1</sup> (Wheaton College v. Department of Revenue, 155 Ill. App.3d 945 (2<sup>nd</sup> Dist. 1987)); and, (2) exempt use, which means that the property must be “exclusively” or primarily used for “school”-related purposes. (People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944)). Only the latter requirement is truly at issue herein, as the instant denial was based solely on lack of exempt use.

Exemptions have been sustained where applicant proves that: (1) it was actively developing the property in question for a specifically identifiable exempt use during the tax year in question. (Weslin Properties v. Department of Revenue, 157 Ill. App.3d 580 (2<sup>nd</sup> Dist. 1987)); or, (2) its use of thereof was "reasonably necessary" to support another exempt uses or contribute to the efficient administration thereof. (MacMurray College v. Wright, 38 Ill.2d 272 (1967); Memorial Child Care v. Department of Revenue, 238 Ill. App. 3d 985 (4<sup>th</sup> Dist. 1992)); or, (3) it was using the property as a storage facility for materials that it used to support another exempt use. (Evangelical Hospitals Corporation v. Department of Revenue, 233 Ill. App.3d 225 (2<sup>nd</sup> Dist. 1991)).

All of this applicant’s post-acquisitional uses of the Museum and its adjacent building centered around one or more of the uses described above. Specifically, applicant was either developing or actually using the Museum for purposes connected to its American Studies degree program. With minor variations pertaining to storage and development for use connected to applicant’s Early Childhood Education program, the same may be said of applicant’s post-acquisitional usage of the adjacent building situated

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1. The legal definition of the term “school” is, for property tax purposes, as follows:

A school, within the meaning of the Constitutional provision, is a place where systematic instruction in useful branches is given by methods common to schools and institutions of learning, which would make the place a school in the common acceptance [sic] of the word.

People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 137 (1911).

on parcel 05-33-426-021. Therefore, applicant is entitled to have these portions of the subject properties exempted from real estate taxation for 45% of the 1997 assessment year, under Sections 9-185 and 15-35 of the Property Tax Code, as a matter of law.

As concerns the parking areas, Section 15-125 of the Property Tax Code states in substance that such areas are subject to exemption provided that they are: (1) owned by a school district, non-profit hospital, school, or religious institution; (2) not leased or otherwise used with a view to profit; and, (3) used in connection with another specifically identifiable exempt use. 35 ILCS 200/15-125.<sup>2</sup> See also, Northwestern Memorial Foundation v. Johnson, 141 Ill. App.3d 309 (1<sup>st</sup> Dist. 1986).

The exempt ownership requirement is not at issue herein except to the very limited extent identified above. Furthermore, nothing in applicant's post-acquisitional uses of the parking areas suggests that said areas were "leased or otherwise used for profit" in contravention of Section 15-125. Indeed, because applicant used the parking areas first as a staging area for Museum-related construction and then as a free parking facility for other exempt portions of the subject properties, there does not appear to be any factual or legal issue as to whether such areas were used for the purposes described in Section 15-125. Therefore, the Department's determination with respect applicant's use thereof should be modified in accordance with the conclusions reached above.

Those conclusions establish that all areas of the subject properties were in exempt use as of July 21, 1997. Consequently, applicant is entitled to judgment as a matter of law with respect to the 45% of the 1997 assessment year that transpired on or after that date. Therefore, the Department's initial determination in this matter, which appears to have

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2. The exact statutory language of Section 15-125 is as follows:

Parking areas, not leased or used for profit, when used as part of a use for which an exemption is provided by this Code and owned by any school district, non-profit hospital, school, or religious or charitable institutions which meets the qualifications for exemption, are exempt.

35 ILCS 200/15-125.

been based on a lack of information that applicant cured via the evidence it submitted in support of its motion for summary judgment, should be modified to reflect that the subject properties be exempt for that period.

**WHEREFORE**, for the reasons set forth above, I recommend that real estate identified by Cook County Parcel Index Numbers 05-33-426-021 and 05-33-426-045 be exempt from real estate taxes for 45% of the 1997 assessment year under Sections 9-185, 15-35 and 15-125 of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq.*

July 13, 2001

Date

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Alan I. Marcus  
Administrative Law Judge